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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,411	03/11/2004	William H. Blair	683120/00002A	7333
7590	03/02/2005		EXAMINER	
STEPTOE & JOHNSON PLLC Sixth Floor Bank One Center P.O. Box 2190 Clarksburg, WV 26302-2190			ADDIE. RAYMOND W	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 03/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/799,411	BLAIR, WILLIAM H.	
	Examiner	Art Unit	
	Raymond W. Addie	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5, 9-12 is/are rejected.
- 7) Claim(s) 6-8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/11/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee # 9,22,165

Lee discloses a method of using a portable, traffic control device (1), and said device comprising:

A housing (5) having a length and width, a height and a plurality of openings a top side thereof. The housing further having a base extending between said 1st and 2nd ends

See Figs. 1, 2.

1st and 2nd shafts (8), rotatably supported in bearings (7), and extending from on end of the device to an opposing end of said device. See Fig. 1.

1st and 2nd plurality of blades (12) each plurality of blades (12) being connected with a respective 1st or 2nd shaft, such that each plurality of blades is rotatable between a 1st or primary position and a second or secondary position.

Biasing means (10) for urging each blade of said blades (12) to rotate upwards toward said 1st or primary position, by gravity.

Wherein said 1st and 2nd positions are generally vertical and horizontal, with respect to the housing (5). See Fig. 4. See Col. 1, ln. 8-col. 2, ln. 74.

In regards to claims 11, 12 Lee discloses each of the pairs of rows of opposing, retractable blades (12) are independently retractable and face in generally opposite directions; as well as a method of providing the portable, modular traffic control device of claim 1 and rotating the blades (12) as desired. See Col. 1, ln. 8-col. 2, ln. 74.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-5, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee #

9,22,165 Dickinson # 4,097,170.

Lee discloses a portable, traffic control device (1) comprising:

A housing (5), blades (12), biasing means (10) a plurality of reinforcing channels (3) attached to said base (5) for contacting a sub-grade of a traffic way. The reinforcing channels each having a guiding recess able to receive 1st and 2nd shafts as well as bushings (7). The ends of the guiding recesses being covered with an end cap (8).

What Lee does not disclose is a housing having top and base plates for protecting the device from the ambient environment. However, Dickinson teaches a modular, traffic controller (M) having a housing (F) able to be attached to a pavement slab (10), said

housing (F) further comprising: Bushing clamps (T) having journal openings (27, 28) to support the axle (30) in rotatable engagement with the cover plate (19); side-pieces (12) and at least one bottom plate (14), as well as a cover or top plate (P) further comprising openings for permitting the exposure of traffic stopping blades (B), there through. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic control device of Lee, with a modular housing, as taught by Dickinson, in order to facilitate attachment and removal from a traffic way; as reasonably suggested by Dickinson. See Figs. 1-3; Cols. 3-4.

In regards to claims 5, 9 Lee although Lee does not disclose a preferred angular orientation of the blades (12) relative to the housing; Lee clearly illustrates in Figs. 2, 3 the blades (12) can be rotated between several degrees below the horizontal and approximately perpendicular to the horizontal. What Lee does not disclose is a preferred position of approximately 50 degrees relative to the bottom of the housing. However, Dickinson teaches it is advantageous to position a traffic stopping blade (B) approximately 45 degrees above the bottom (14) of the housing (F), in order to position the cutting blade flush with the mounting plate (P) when the blades are depressed to the generally horizontal position. Further Dickinson teaches it is desirable to connect the traffic stopping device to similar devices, in order to form an elongated, bladed barrier to traffic.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to dispose the traffic stopping blades of Lee, at a 1st or primary position of approximately 50 degrees from the bottom of the housing (5), in order to facilitate retraction of the blades. See Lee Cols. 1-2; Dickinson Col. 5, Ins. 38-48.

3. Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee # 9,22,165 in view of Behan # 5,588,774.

Lee discloses a portable, traffic control device (1) comprising:

A housing (5), blades (12), biasing means (10) a plurality of reinforcing channels (3) attached to said base (5) for contacting a sub-grade of a traffic way. What Lee does not disclose is an interconnect able housing for interconnecting a plurality of similar traffic control devices. However, Behan teaches a tire spiking apparatus (1) having top and bottom plates defining a housing and permitting one housing to be detachably connected with another housing via screw assembly (8), and that a blade rotating shaft (9) can be interconnected with other blade rotating shafts of similar housings (1) via a coupler and screw lock-tite assembly (20, 12, 13, 112, 108). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic control device of Lee, with a modular, interconnect able housing assembly, as taught by Behan, in order to form a traffic barrier of desired, elongated dimension.

Allowable Subject Matter

4. Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marts et al. # 6,474,170 discloses a modular traffic controller.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 872-9326.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

On or about 3/30/05 Examiner Addie's telephone number will become (571) 272-6986.



**Raymond Addie
Patent Examiner
Group 3600**

**RWA
2/26/2005**